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NOTIFICATION.

No. R. L. 175—Legis. 9-46-1, dated Bangalore, the 3rd August 1946.

Ordered that the accompanying Mysore Motor Vehicles and Road Traffic (Third Amendment) Act, 1946, which received the assent of His Highness the Maharaja, on the 29th day of July 1946, be published as Act No. XXXII of 1946, in the *Mysore Gazette*, for general information.

S. KANAKARATNARAJ,
Legal Remembrancer and
Secretary to Government,
Law Department.

ACT No. XXXII OF 1946.

THE MYSORE MOTOR VEHICLES AND ROAD TRAFFIC (THIRD AMENDMENT) ACT, 1946.

(Received the assent of His Highness the Maharaja on the 29th day of July 1946.)

WHEREAS it is expedient further to amend the Mysore Motor Vehicles and Road Traffic Act, 1944;

It is hereby enacted as follows:—

Short title and Commencement.

1. (*1*) This Act may be called the Mysore Motor Vehicles and Road Traffic (Third Amendment) Act, 1946.

(*2*) It shall come into force on and from the 1st day of July 1946.

2. After section 77 of the Mysore Motor Vehicles and Road Traffic Act, 1944, the following Chapter, Heading and Sections shall be inserted, namely,—

CHAPTER VII-A.

INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS.

77-A. In this Chapter—

Definitions.

(*a*) "authorised insurer" means an insurer in whose case the requirements of either the Insurance Act, 1939, or any enactment in force in British India or any other Indian State containing the like requirements, with respect to the registration of and deposits by insurers are complied with, and includes any insurance business carried on by the Government, and

(*b*) "certificate of insurance" means a certificate issued by an authorised insurer in pursuance of sub-section (*4*) of section 77-C ; and includes a cover note complying with such requirements as may be prescribed and where more than one certificate has been issued in connection with a policy, or where a copy of a certificate has been issued, all those certificates or that copy, as the case may be.

Necessity for insurance against third party risk.

77-B. (*1*) No person shall use except as a passenger or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter.

Explanation.—A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

(*2*) This section shall not apply,

(*a*) to any vehicle owned by His Highness the Maharaja or His Highness' immediate relations or owned by or on behalf of the Government or a local authority notified in this behalf by the Government or by the State Railway;

(*b*) subject to any prescribed conditions, to any vehicle owned by any Government in British India or by the Government of or by the Crown Representative in, any Indian State or of the French or the Portuguese Settlements bounded by India or of such local authority in British India or an Indian State as may be notified in this behalf by any Government in British India or by the Government of any Indian State, as the case may be.

Requirements of policies and limits of liability.

77-C. (*1*) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(*a*) is issued by a person who is an authorized insurer, and

(*b*) insures the person or classes of persons specified in the policy to the extent specified in sub-section (*2*) against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place :

Provided that a policy shall not, except as may be otherwise provided under sub-section (*3*), be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment ; or

(ii) except where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, to cover liability in respect of

the death of or bodily injury to persons being carried in or upon or entering or mounting or alighting from the vehicle at the time of the occurrence of the event out of which a claim arises; or

(iii) to cover any contractual liability.

(*2*) Subject to the proviso to sub-section (*1*), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely :—

(a) where the vehicle is a vehicle used or adapted to be used for the carriage of goods, a limit of twenty thousand rupees;

(b) where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of twenty thousand rupees in all, and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more than six passengers excluding the driver or two thousand rupees in respect of an individual passenger, if the vehicle is registered to carry more than six passengers excluding the driver;

(c) where the vehicle is a vehicle of any other class, the amount of the liability incurred.

(*3*) The Government may prescribe that a policy of insurance shall, in order to comply with the requirements of this Chapter, cover any liability arising under the provisions of the Workmen's Compensation Act, 1928, in respect of the death of or bodily injury to any paid employee engaged in driving or otherwise in attendance on or being carried in a motor vehicle.

(*4*) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance or a cover note in the prescribed form and containing the prescribed particulars of any conditions subject to which the policy is issued and of any other prescribed matters; and different forms particulars and matters may be prescribed in different cases.

(*5*) Notwithstanding anything elsewhere contained in any law, a person issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

Duty of insurers to satisfy judgments against persons insured in respect of third party risks.

77-D. (*1*) If, after a certificate of insurance or a cover note has been issued under sub-section (*4*) of section 77-C in favour of the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under clause (*b*) of sub-section (*1*) of section 77-C (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to

avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment-debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(*2*) No sum shall be payable by an insurer under sub-section (*1*) in respect of any judgment unless before or after the commencement of the proceedings in which the judgment is given, the insurer had notice through the Court of the bringing of the proceedings, or in respect of any judgment so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely,—

(a) that the policy was cancelled by mutual consent or by virtue of any provision contained therein before the accident giving rise to the liability, and that either the certificate of insurance was surrendered to the insurer or that the person to whom the certificate was issued has made an affidavit stating that the certificate has been lost or destroyed, or that either before or not later than fourteen days after the happening of the accident the insurer has commenced proceedings for cancellation of the certificate after compliance with the provisions of section 77-M; or

(b) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely,—

(*i*) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward; or

(b) for organized racing and speed testing; or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a public service vehicle or a goods vehicle; or

(d) without side-car being attached, where the vehicle is a motor cycle; or

(*ii*) a condition excluding driving by a named person or persons or by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification; or

(*iii*) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(c) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular.

(*3*) Where a certificate of insurance or cover note has been issued under sub-section (*4*) of section 77-C to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the

persons insured thereby by reference to any conditions other than those in clause (b) of sub-section (*2*) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (*1*) of section 77-C be of no effect:

Provided that any sum paid by the insurer in or towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(*4*) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy, exceeds the amount for which the insurer would, apart from the provisions of this section, be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from that person.

(*5*) In this section the expressions "material fact" and "material particular" mean, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and the expression "liability covered by the terms of the policy" means a liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy.

(*6*) No insurer to whom the notice referred to in sub-section (*2*) has been given, shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment as is referred to in sub-section (*1*) otherwise than in the manner provided for in sub-section (*2*).

Rights of third parties against insurers on insolvency of the insured.

77-E. (*1*) Where under any contract of insurance effected in accordance with the provisions of this Chapter a person is insured against liabilities which he may incur to third parties, then—

(a) in the event of the person becoming insolvent or making a composition or arrangement with his creditors, or

(b) where the insured person is a company, in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to the company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge,

if, either before or after that event, any such liability is incurred by the insured person, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order for the administration of the estate of a deceased debtor is made according to the law of insolvency, then if any debt provable in insolvency is owing by the deceased in respect of a liability to a third party against which he was insured under a contract of insurance in accordance with the provisions of this Chapter, the deceased debtor's rights against the insurer in respect of that liability shall, notwithstanding anything to the contrary in any provision of law, be transferred to and vest in the person to whom the debt is owing.

(3) Any condition in a policy issued for the purposes of this Chapter purporting either directly or indirectly to avoid the policy or to alter the rights of the parties thereunder upon the happening to the insured person of any of the events specified in clause (a) or clause (b) of sub-section (1) or upon the making of an order for the administration of the estate of a deceased debtor according to the law of insolvency, shall be of no effect.

(4) Upon a transfer under sub-section (1) or sub-section (2) the insurer shall be under the same liability to the third party as he would have been to the insured person, but—

(a) if the liability of the insurer to the insured person exceeds the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the insured person against the insurer in respect of the excess, and

(b) if the liability of the insurer to the insured person is less than the liability of the insured person to the third party, nothing in this Chapter shall affect the rights of the third party against the insured person in respect of the balance.

Duty to give information as to insurance.

77-F. (1) No person against whom a claim is made in respect of any liability referred to in clause (b) of sub-section (1) of section 77-C shall on demand by or on behalf of the person making the claim refuse to state whether or not he was insured in respect of that liability by any policy issued under the provisions of this Chapter, or would have been so insured if the insurer had not avoided or cancelled the policy, nor shall he refuse, if he was or would have been so insured, to give such particulars with respect to that policy as were specified in the certificate of insurance issued in respect thereof.

(2) In the event of any person becoming insolvent or making a composition or arrangement with his creditors or in the event of an order being made for the administration of the estate of a deceased person according to the law of insolvency, or in the event of a winding up order being made or a resolution for a voluntary winding up being passed with respect to any company or of a receiver or manager of the company's business or undertaking

being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge on any property comprised in or subject to the charge, it shall be the duty of the insolvent-debtor, personal representative of the deceased debtor or company, as the case may be, or the official assignee or receiver in insolvency, trustee, liquidator, receiver or manager, or person in possession of the property to give at the request of any person claiming that the insolvent-debtor, deceased debtor or company is under such liability to him as is covered by the provisions of this Chapter, such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by section 77-E and for the purpose of enforcing such rights, if any; and any such contract of insurance as purports whether directly or indirectly to avoid the contract or to alter the rights of the parties thereunder upon the giving of such information in the events aforesaid, or otherwise to prohibit or prevent the giving thereof in the said event shall be of no effect.

(*3*) If, from the information given to any person in pursuance of sub-section (*2*) or otherwise, he has reasonable ground for supposing that there have or may have been transferred to him under this Chapter rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said sub-section on the persons therein mentioned.

(*4*) The duty to give the information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

Settlement between insurers and insured persons.

77-G. (*1*) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (*1*) of section 77-C, shall be valid unless such third party is a party to the settlement.

(*2*) Where a person who is insured under a policy issued for the purpose of this Chapter has become insolvent, or where, if such insured person is a company, a winding up order has been made or a resolution for a voluntary winding up has been passed with respect to the company, no agreement made between the insurer and the insured person after liability has been incurred to a third party and after the commencement of the insolvency or winding

up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

Saving in respect of Sections 77-E, 77-F and 77-G.

77-H. (*1*) For the purpose of sections 77-E, 77-F and 77-G, a reference to "liabilities to third parties" in relation to a person insured under any policy of insurance shall not include a reference to any liability of that person in the capacity of insurer under some other policy of insurance.

(*2*) The provisions of sections 77-E, 77-F and 77-G shall not apply where a company is wound up voluntarily merely for the purpose of reconstruction or of an amalgamation with another company.

Insolvency of insured persons not to affect liability of insured or claims by third parties.

77-I. Where a certificate of insurance had been issued to the person by whom a policy has been effected, the happening in relation to any person insured by the policy of any such event as is mentioned in sub-section (*1*) or sub-section (*2*) of Section 77-E shall, notwithstanding anything in this Chapter, not affect any liability of that person of the nature referred to in clause (*b*) of sub-section (*1*) of Section 77-C; but nothing in this section shall affect any rights against the insurer conferred under the provisions of sections 77-E, 77-F and 77-G on the person to whom the liability was incurred.

Effect of death on certain causes of action.

77-J. Notwithstanding anything contained in any law relating to succession, the death of a person in whose favour a certificate of insurance or cover note had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of the said event against his estate or against the insurer.

Effect of certificate of insurance.

77-K. When an insurer has issued a certificate of insurance in respect of a contract of insurance between the insurer and the insured person, then—

(*a*) if and so long as the policy described in the certificate, has not been issued by the insurer to the insured, the insurer shall as between himself and any other person except the insured, be deemed to have issued to the insured persons a policy of insurance conforming in all respects to the description and particulars stated in such certificate, and

(*b*) if the insurer has issued to the insured the policy described in the certificate, but the actual terms of the policy are less favourable to persons claiming under or by virtue of the policy against the insurer either directly or through the insured than the particulars of the policy as stated in the certificate, the policy shall, as between the insurer and any other person except the insured, be deemed to be in terms conforming in all respects to the particulars stated in the said certificate.

Duty to surrender certificate on cancellation of policy.

77-L. (*1*) Whenever the period of cover under a policy of insurance issued under the provisions of this Chapter is terminated or suspended by any means before its expiration by effluxion of time, the insured person shall within seven days after such termination or suspension deliver to the insurer by whom the policy was issued the latest certificate of insurance given by the insurer in respect of the said policy, or if the said certificate has been lost or destroyed, make an affidavit to that effect.

(*2*) Whoever fails to surrender a certificate of insurance or to make an affidavit, as the case may be, in accordance with the provisions of this section, shall be punishable with fine which may extend to fifteen rupees for every day that the offence continues subject to a maximum of five hundred rupees.

Duty of insurer to notify Registering Authority cancellation or suspension of the policy.

77-M. Whenever a policy of insurance issued under the provision of this Chapter is cancelled or suspended by the insurer who has issued the policy, the insurer shall within seven days notify such cancellation or suspension to the registering authority or to such other authority as the Government may prescribe.

Production of certificate of insurance.

77-N. (*1*) Any person driving a motor vehicle in any public place shall, on being so required by a police officer in uniform, produce the certificate of insurance relating to the use of the vehicle:

Provided that if the driver of a motor vehicle, within seven days from the date on which the production of the certificate of insurance was so required, produces the certificate at such police station as may have been specified by him at the time its production was required, he shall not be liable to conviction under this sub-section by reason only of failure to produce the certificate to the police officer.

(*2*) If, where owing to the presence of a motor vehicle in a public place, an accident occurs involving bodily injury to another person, the driver of the vehicle does not at the time produce the certificate of insurance to a police officer, he shall produce the certificate of

insurance at the police station at which he makes the report required by section 74:

Provided that no person shall be liable to conviction under this sub-section by reason only of failure to produce his certificate of insurance if, within seven days from the occurrence of the accident, he produces the certificate at such police station as may be specified by him to the police officer at the site of the accident or to the officer in charge of the police station at which he reported the accident.

(*3*) The owner of a motor vehicle shall give such information as he may be required by or on behalf of a police officer empowered in this behalf by the Government to give for purpose of determining whether the vehicle was or was not being driven in contravention of section 77-B and on any occasion when the driver was required under this section to produce his certificate of insurance.

(*4*) In this section the expression 'produce his certificate of insurance' means produce for examination the relevant certificate of insurance or such other evidence as may be prescribed that the vehicle was not being driven in contravention of section 77-B.

Production of certificate of insurance on application for authority to use vehicle.

77-O. The Government may make rules requiring the owner of any motor vehicle, when applying, whether by payment of a tax or otherwise, for authority to use the vehicle in a public place, to produce such evidence as may be prescribed by those rules to the effect that either—

(*a*) on the date when the authority to use the vehicle comes into operation there will be in force the necessary policy of insurance in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or

(*b*) the vehicle is a vehicle to which section 77-B does not apply.

Co-operative insurance.

77-P. (*1*) The Government may, on the application of a co-operative society of public service vehicle owners registered or deemed to have been registered under the Co-operative Societies Act, 1918, and subject to the control of the Registrar of Co-operative Societies, allow the society to transact the business of an insurer for the purposes of this Chapter as if the society were an authorised insurer, subject to the following conditions, namely :—

(a) the society shall establish and maintain a fund of not less than twenty-five thousand rupees for the first fifty vehicles or fractional part thereof and *pro rata* for every additional vehicle in the possession of members of the society and the said fund shall be lodged

in such custody as the Government may prescribe and shall not be available for meeting claims or other expenses except in the event of the winding up of the society ;

(b) the liability of the society shall be limited as specified in clause (a) of sub-section (2) of section 77-C ;

(c) the society shall, if required by the Government, re-insure against claims above a prescribed amount ;

(d) the provisions of this Chapter, in so far as they relate to the protection of third parties and to the issue and production of certificates, shall apply in respect of any insurance effected by the society ;

(e) an independent authority not associated with the society shall be appointed by the Government to facilitate and assist in the settling of claims against the society ;

(f) the society shall operate on an insurance basis, that is to say :

(*i*) it shall levy its premiums in respect of a period not exceeding 12 months, during which period the insured shall be held covered in respect of all accidents arising, subject to the limits of liability, specified in clause (b) of sub-section (2) of section 77-C ;

(*ii*) it shall charge premiums estimated to be sufficient having regard to the risks, to meet the capitalised value of all claims arising during the period of cover, together with an adequate charge for expenses attaching to the issue o policies and to the settlement of claims arising thereunder ;

(g) the society shall furnish to the Superintendent of Insurance the returns required to be furnished by insurers under the provisions of the Insurance Act, 1939, and the Superintendent of Insurance may exercise in respect thereof any of the powers exercisable by him in respect of returns made to him under the said Act ; and

(h) any provisions of law applicable to the winding up of authorised insurers shall be equally applicable to the society.

(*2*) Except as provided in sub-section (*1*), the Insurance Act, 1939, shall not apply to any co-operative society of public service vehicle owners allowed to transact the business of an insurer under this section.

Duty of furnishing particulars of vehicle involved in accident.

77-Q. The registering authority or the officer in charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee, any information at the disposal of the said authority or the said police officer relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was insured by it.

Repeal and savings.

3. The Mysore Motor Vehicles and Road Traffic (Third Amendment) (Emergency) Act, 1946, (XIX of 1946) is hereby repealed. But any rules made, anything done and any action taken in exercise of any power conferred by or under the said Emergency Act, shall be deemed to have been made, done or taken in exercise of powers conferred by or under this Act, as if this Act had commenced on the 24th day of May 1946.

N. MADHAVA RAU,
Dewan.

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